

DATE: SEPTEMBER 7, 2010
TIME: 10:45 a.m.

GENOVA AND MALIN
Attorneys for the Debtors
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Thomas Genova, Esq. (TG4706)
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE

SHAN E. VITARIUS and
JESSICA J. VITARIUS,

CHAPTER 13
CASE NO. 09-35840(CGM)

Debtors.

-----X

**NOTICE OF MOTION VOIDING LIEN PURSUANT
TO 11 U.S.C. §§506(a) AND 506(d)**

S I R S :

PLEASE TAKE NOTICE that the undersigned, being the attorneys for the above-referenced debtors, will move the above-named Court located at 355 Main Street, Poughkeepsie, New York, 12601, on the 7th day of **September, 2010** at **10:45 a.m.**, for an Order pursuant to 11 U.S.C. §§502(a)(1), 506(a), 506(d), as follows:

(a) valuing the judgment lien held by CITIBANK (SOUTH DAKOTA), NA as against real property upon which the debtors' names appears at zero, declaring said lien void and disallowing said lien; and

(b) for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, shall be served upon and received by counsel for the debtors at the address indicated below and filed with the Court together with proof of such service, no later than three (3) days prior to the return date hereof.

Dated: Wappingers Falls, New York
July 28, 2010

GENOVA & MALIN
Attorneys for the Debtors

By: /s/Andrea B. Malin
ANDREA B. MALIN (AM4424)
Hampton Business Center
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TO: JEFFREY L. SAPIR, ESQ.
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White Plains, New York 10603

SHAN E. & JESSICA J. VIATRIUS
89 Dashville Road
New Paltz, NY 12561

CITIBANK
c/o PRA Receivables Management, LLC
PO Box 41067
Norfolk, VA 32541
Attn: President

CITIBANK
701 East 60th Street
North Sioux Falls, SD 57117
Attn: President

PETER T. ROACH & ASSOCIATES
Attorneys for CitiBank
115 Eileen Way Suite 103A
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Attn: Peter T. Roach, Esq.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
POUGHKEEPSIE DIVISION

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IN RE

SHAN E. VITARIUS and
JESSICA J. VITARIUS,

CHAPTER 13
CASE NO. 09-35840(CGM)

Debtors.

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MOTION VOIDING LIEN PURSUANT TO 11 U.S.C. §§506(a), 506(d)

TO HONORABLE ADALI S. HARDIN, JR, UNITED STATES BANKRUPTCY JUDGE:

The Motion of SHAN E. VITARIUS and JESSICA J. VITARIUS (the "debtors")

by their attorneys, GENOVA & MALIN, respectfully alleges:

1. On April 7, 2009, the debtors filed a Petition for Reorganization under Chapter 13 of the Bankruptcy Code.
2. Prior to the filing of the instant petition, the debtors' names were placed upon the deed to real property located at 66 N. Putt Corners Road, New Paltz, New York. Said property is used as a residence for the debtors' parents. Their names were placed upon the deed by Frederick Vitarius for the purpose of obtaining a mortgage for the property for the debtors' parents. No gift of property or ownership was intended. The debtors have never invested any

sums for the upkeep and maintenance of the property nor in the purchase of said property.

3. At the time of the filing of the petition, the residence was encumbered by a first mortgage lien held by FIRST HORIZON HOME LOANS ("FIRST") in the approximate sum of ONE HUNDRED SEVENTEEN THOUSAND DOLLARS (\$117,000.00).

4. At the time of the filing of the petition, the rental was encumbered by a judgment lien held by CITIBANK (SOUTH DAKOTA), NA in the sum of TWENTY-THREE THOUSAND NINE HUNDRED TWENTY-NINE DOLLARS AND THIRTY-SIX CENTS (\$23,929.36). Annexed hereto as Exhibit "A" is a copy of said Judgment.

5. On July 14, 2010, Richard Steffens, performed a Comparative Market Analysis on the property and determined it to have a value of TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$225,000.00). Annexed hereto as Exhibit "B" is a copy of said Analysis. Although there would appear to be equity in the property, as the debtors are not entitled to same, as to the debtors' the real property has no value.

A. THE JUDGMENT LIEN HELD BY CITIBANK AGAINST THE DEBTORS' PROPERTY HAS A SECURED VALUE OF ZERO AND IS VOID AND SHOULD BE DISALLOWED IN ITS ENTIRETY

6. Pursuant to 11 U.S.C. §§506(a) and 506(d), the debtors may void the lien against the property.

7. Section 506(a) of the United States Bankruptcy Code provides, in pertinent part:

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount

of such allowed claim....

8. Section 506(d) of the United States Bankruptcy Code provides, in relevant part:

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void....

9. As the debtor are not entitled to the value of the property, the value of CITI'S interest in the estate's interest in the property secured by such lien is ZERO.

10. By reason of the foregoing, the lien securing said claim should be disallowed and declared void.

WHEREFORE, it is respectfully requested that the judgment lien held by CITI against the real property located at 66 N. Putt Corners Road, New Paltz, New York, be valued at zero, be disallowed and declared void, and that the debtors be granted such other and further relief as to the Court may seem just and proper.

Dated: Wappingers Falls, New York
July 28, 2010

GENOVA & MALIN
Attorneys for Debtors

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